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Attorneys for Plaintiff
6 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
[EXEMPT FROM FEES - GOV. CODE § 6103]
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10

11 THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,

12 Plaintiff,
13

14 v.

15 GOPAL DAYANENI; ANYA
KAMENSKAYA; DEVIN MURPHY;
16 STEFANIE RAWLINGS; ERIC LARSEN,
DAVID GREFARTH, RUSSELL BATES,
ALEJANDRA CANO; VADEN
17 DABNEY; ERIK EISENBERG,
ELIZABETH FAIRWEATHER; MARIKA
18 IYER; NATHAN PITTS; GABRIELLE
SILVERMAN; FRANCISCO STIERLE
19 and DOES 1 through 150, inclusive,

20 Defendants.
21

Case No.

**COMPLAINT FOR TRESPASS AND
NUISANCE**

22 Plaintiff THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("The Regents", the
23 "University" or "Plaintiff") complains as follows:

24 **PARTIES, JURISDICTION AND VENUE**

25 1. The Regents is, and at all times relevant to this action was, a California
26 constitutional corporation, authorized and empowered to administer a public trust known as the
27 University of California, with full powers of organization and government thereof, including all
28 powers necessary or convenient for the effective administration of the trust. Cal. Const., art. IX,

1 § 9, subds. (a) & (f). The Regents maintains a campus in the County of Alameda known as the
2 University of California, Berkeley ("UC Berkeley").

3 2. Defendant ANYA KAMENSKAYA ("KAMENSKAYA") is a natural
4 person. KAMENSKAYA's place of residence is unknown. The Regents will seek leave of the
5 Court to amend this complaint to allege such place of residence as soon as it is ascertained.

6 3. Defendant GOPAL DAYANENI ("DAYANENI") is a natural person.
7 DAYANENI's place of residence is unknown. The Regents will seek leave of the Court to
8 amend this complaint to allege such place of residence as soon as it is ascertained.

9 4. Defendant DEVIN MURPHY ("MURPHY") is a natural person.
10 MURPHY's place of residence is unknown. The Regents will seek leave of the Court to amend
11 this complaint to allege such place of residence as soon as it is ascertained.

12 5. Defendant STEFANIE RAWLINGS ("RAWLINGS") is a natural person.
13 RAWLINGS' place of residence is unknown. The Regents will seek leave of the Court to amend
14 this complaint to allege such place of residence as soon as it is ascertained.

15 6. Defendant ERIC LARSEN ("LARSEN") is a natural person. LARSEN's
16 place of residence is unknown. The Regents will seek leave of the Court to amend this complaint
17 to allege such place of residence as soon as it is ascertained.

18 7. Defendant DAVID GREFARTH ("GREFARTH") is a natural person.
19 GREFARTH's place of residence is unknown. The Regents will seek leave of the Court to
20 amend this complaint to allege such place of residence as soon as it is ascertained.

21 8. Defendant RUSSELL BATES ("BATES") is a natural person. The
22 Regents is informed and believes, and on that basis alleges, that BATES resides at 2437
23 Piedmont, #202, Berkeley, CA 94704.

24 9. Defendant ALEJANDRA CANO ("CANO") is a natural person. The
25 Regents is informed and believes, and on that basis alleges, that CANO resides at 3090 King
26 Street, Berkeley, CA 94703.

27 10. Defendant VADEN DABNEY ("DABNEY") is a natural person. The
28 Regents is informed and believes, and on that basis alleges, that DABNEY resides at 6434

1 Raymond Street, Oakland, CA 94609.

2 11. Defendant ERIK EISENBERG ("EISENBERG") is a natural person. The
3 Regents is informed and believes, and on that basis alleges, that EISENBERG resides at 809
4 Aileen Street, Oakland, CA 94608.

5 12. Defendant ELIZABETH FAIRWEATHER ("FAIRWEATHER") is a
6 natural person. The Regents is informed and believes, and on that basis alleges, that
7 FAIRWEATHER resides at 7903 W. Elm Ave., Apt. 376, Rancho Cucamonga, CA 91730.

8 13. Defendant MARIKA IYER ("IYER") is a natural person. IYER's place of
9 residence is unknown. The Regents will seek leave of the Court to amend this complaint to allege
10 such place of residence as soon as it is ascertained.

11 14. Defendant NATHAN PITTS ("PITTS") is a natural person. The Regents is
12 informed and believes, and on that basis alleges, that PITTS resides at 3303 Camarones Place,
13 San Ramon, CA 94583.

14 15. Defendant GABRIELLE SILVERMAN ("SILVERMAN") is a natural
15 person. SILVERMAN's place of residence is unknown. The Regents will seek leave of the
16 Court to amend this complaint to allege such place of residence as soon as it is ascertained.

17 16. Defendant FRANCISCO STIERLE ("STIERLE") is a natural person. The
18 Regents is informed and believes, and on that basis alleges, that STIERLE resides at 2313
19 Channing Way, Apt. E, Berkeley, CA 94704.

20 17. Defendants KAMENSKAYA, DAYANENI, MURPHY, RAWLINGS,
21 LARSEN, GREFARTH, BATES, CANO, DABNEY, EISENBERG, FAIRWEATHER, IYER,
22 PITTS, SILVERMAN and STIERLE are referred to collectively herein as "defendants."

23 18. The Regents does not know the true names or capacities of defendants sued
24 here as DOES 1 through 150, inclusive ("DOES"). The Regents will seek leave of the Court to
25 amend this complaint to allege such names and capacities as soon as they are ascertained. The
26 Regents is informed and believes, and on that basis alleges, that said DOES are liable to the
27 Regents as alleged in this complaint. Each reference in this complaint to one or more defendants
28 also includes and refers to each of the DOES.

1 19. The Regents is informed and believes, and on that basis alleges, that, at all
2 times relevant to this action, defendants were the agents, representatives, or persons acting in
3 concert with each other and, in so doing, were at all relevant times acting within the scope of such
4 agency, representation, or employment, and with the permission and consent of each other.

5 20. Defendants are subject to personal jurisdiction in Alameda County because
6 many of the acts and omissions by defendants complained of herein occurred in or caused injuries
7 in this county.

8 21. Venue is proper in Alameda County because a substantial part of the events
9 or omissions giving rise to the claims ascertained herein occurred in this county, because the
10 injuries complained of herein occurred in this county, and because the property onto which
11 defendants have trespassed and have created a nuisance is located in this county.

12 **GENERAL ALLEGATIONS**

13 22. The Regents is the owner of property located at Buchanan Street and San
14 Pablo Avenue in Albany, California known as Gill Tract. Gill Tract is used by UC Berkeley's
15 College of Natural Resources to conduct plant research.

16 23. The Regents is informed and believes, and on that basis alleges, that on or
17 about April 22, 2012, and continuing to the present time, defendants and others acting in concert
18 with them cut the chains securing the gates into Gill Tract, entered the property and have since
19 established a campsite and attempted to grow food on Gill Tract. Neither defendants nor those
20 acting in concert with them had permission of the Regents or its agents to enter Gill Tract,
21 establish a campsite or grow food on this property. Shortly after defendants and others acting in
22 concert with them entered the property on April 22, UC Berkeley Police personnel informed them
23 they were trespassing and were subject to arrest and/or fines. In response, several of the
24 individuals, armed with large, sharp garden tools, told UC Berkeley Police personnel that if they
25 continued to enter the area, things could turn hostile.

26 24. On or about April 28, 2012, and continuing every day since that time,
27 personnel from the UC Berkeley Police Department have read a statement to the individuals
28 present at Gill Tract informing them that they are illegally trespassing on University property and

1 directing them to leave. Defendants and those acting in concert with them have refused and still
2 refuse to leave, remove their belongings and cease their activities at Gill Tract.

3 25. The Regents is informed and believes that there were approximately five or
4 six tents located on Gill Tract on or about April 22, 2012. Since that time, the number of tents on
5 Gill Tract has fluctuated, at times numbering more than 20 tents.

6 26. The Regents is informed and believes, and on that basis alleges, that the
7 defendants' activities on Gill Tract were planned and coordinated prior to April 22, 2012. An
8 unknown number of co-conspirators, acting in concert with defendants, decided upon the date and
9 location of the occupation at Gill Tract, helped grow starter plants, provided equipment and tools
10 used to prepare the field and build various structures, including makeshift portable toilets and a
11 large, wood-framed meeting structure, and provided food. These same unnamed co-conspirators
12 have assisted the continuing presence of defendants at Gill Tract, including by participating in
13 events held at Gill Tract, alerting defendants to the arrival and presence of police personnel and
14 advising other occupants not to identify themselves or speak to police personnel, and providing
15 food and water and other material support to defendants, among other things. Defendants and
16 their co-conspirators also have conspired to present demands to the University regarding the
17 future use of Gill Tract and to purport to negotiate with the University.

18 27. The Regents is informed and believes, and on that basis alleges, that on
19 May 7, 2012, defendants, acting in concert with the co-conspirators, issued a statement refusing
20 to leave Gill Tract unless the University agreed to certain demands that would in effect allow
21 defendants to continue to use Gill Tract and would impose limitations on the manner in which the
22 University could use its own property. Defendants demanded that the University: (a) make
23 municipal water available to them at Gill Tract; (b) provide access to the field to allow them to
24 tend to crops they have planted on the east side of the field and to maintain the children's garden
25 in the northwest corner of the tract, as well as the BASIL seed bank homecoming site on the edge
26 of the west field; (c) refrain from the use of chemical herbicides, pesticides, fungicides, chemical
27 fertilizer or plastic tarp in the soil.

28 28. The Regents is informed and believes, and on that basis alleges, that

1 defendants and their co-conspirators have established a website, www.tackbackthetract.com,
2 setting forth their purpose in occupying Gill Tract: "We envision a future of food sovereignty, in
3 which our East Bay communities make use of available land - occupying it where necessary - for
4 sustainable agriculture to meet local needs." Thus, defendants' actions are not simply an isolated
5 action challenging the use of University property, but part of a broader effort to illegally occupy,
6 not just the Gill Tract, but any land that they believe is appropriate for agriculture.

7 **DEFENDANTS ARE PREVENTING UNIVERSITY SCIENTISTS FROM CONDUCTING**
8 **THEIR RESEARCH**

9 29. Gill Tract is a parcel of land used by UC Berkeley's College of Natural
10 Resources (the "College") to conduct basic scientific research on plant genetics. The College has
11 used Gill Tract for research crops since at least the 1940's. This season, three University
12 scientists, Dr. Sarah Hake, Dr. Frank Harmon and Dr. Damon Lisch (the "Scientists"), plan to
13 plant thousands of corn plants on Gill Tract as the central part of their research on corn genetics.
14 The Scientists typically plant their corn around mid-May, depending on weather and soil
15 conditions, to ensure that corn matures before the winter rains begin.

16 30. The University employs a staff of individuals responsible for preparing Gill
17 Tract for the annual corn planting. Preparing the field, which involves mowing the weeds,
18 discing, plowing and rototilling the soil, putting in planting rows, installing drip irrigation lines
19 and placing black plastic on the rows to suppress weeds, takes approximately one week, and
20 sometimes longer. Based on the weather patterns this spring, the staff had planned to begin
21 preparing Gill Tract for planting during the week of April 30. Because of defendants' continuing
22 presence on Gill Tract, however, University staff have not been able to begin the work of
23 preparing the field for the Scientists, and the Scientists have not been able to begin planting.

24 31. The Scientists have no reasonable alternative facility available to serve as a
25 substitute location for their research corn. The nature of the Scientists' work requires them to be
26 in close proximity to the plants. Gill Tract is particularly well-suited to this research because of
27 its close proximity to UC Berkeley's campus, where Dr. Lisch's laboratory is located, and the
28 U.S. Department of Agriculture's Plant Gene Expression Center in Albany, California, where

1 Dr. Hake and Dr. Harmon's laboratories and offices are located.

2 32. If defendants do not leave the property immediately, the growing season
3 will be lost. There is no way to recover the lost season of research. Failure to plant a crop this
4 season will harm the University in several ways. The Scientists will be unable to continue and
5 progress in their research programs this season. The Scientists will lose data from which to create
6 new, original publications, a requirement of their positions with the University. The loss of a
7 season also will affect the ability to apply for new grant opportunities, as new research
8 discoveries are vital to that application process. The Scientists also will be unable to report the
9 progress of their research to the agencies that have provided them grant funding.

10 **DEFENDANTS' CONDUCT HARMS THE UNIVERSITY, ITS REPUTATION AND ITS**
11 **STUDENTS**

12 33. Defendants' presence on Gill Tract, preventing the ability of the Scientists
13 to carry out their research programs, significantly impacts the University. The inability to carry
14 out the research program directly impairs the University's mission as a research university. One
15 of the primary purposes of the University is to support, encourage and create original academic
16 research.

17 34. The University's reputation is not simply a matter of prestige or bragging
18 rights. The University's reputation is vital to its ability to attract and retain the top researchers in
19 each field.

20 35. The loss of the season of research crops will have a significant impact on
21 the graduate students in the College. Graduate students typically have only five years to complete
22 their doctoral degrees. Several graduate students work closely with the Scientists who rely on
23 Gill Tract to conduct their genetics research. These students face a lost year in their academic
24 career that they will never get back. This delay could have lasting repercussions as they strive to
25 create original research in their fields and to build their reputations.

26 36. The lost research crop also affects the post-doctoral fellows who work with
27 the Scientists in Gill Tract. Post-doctoral fellows are expected to produce a significant amount of
28 original research during their tenure at the College. The lost planting season will impair their

1 research opportunities.

2 37. The impact of the lost season also extends to undergraduate students and
3 some high school students from the local community. Each year, the Scientists sponsor a number
4 of students who have a burgeoning interest in science to work with the students on their research
5 at Gill Tract. The students who were planning to work at Gill Tract this summer will lose this
6 valuable experience if defendants and those acting in concert with them remain on Gill Tract.

7 **DEFENDANTS ARE CREATING RISKS FOR THEMSELVES AND OTHERS**

8 38. The Regents is informed and believes, and on that basis alleges, that
9 defendants have hosted several events for members of the public on Gill Tract since entering the
10 property on or about April 22. None of these events were authorized or supervised by the
11 University. The Regents is informed or believed that defendants have failed to comply with
12 University standards and rules for ensuring the safety of the public at University-sponsored
13 events.

14 39. The Regents is informed and believes that defendants have been working
15 with motorized equipment and other dangerous equipment on Gill Tract without apparent
16 observation of basic safety standards. For example, defendants were engaged in rototilling the
17 soil in the presence of unsupervised children.

18 **DEFENDANTS HAVE BEEN WARNED REPEATEDLY BUT CONTINUE TO RESIDE**
19 **ON GILL TRACT**

20 40. On a daily basis between April 28, 2012 and the present, UC Berkeley
21 Police have ordered the individuals present at Gill Tract to leave the property.

22 41. These warnings from the University Police include admonitions that it is
23 illegal to trespass on Gill Tract and that they are subject to arrest, fines and prosecution if they do
24 not vacate the property.

25 42. Defendants have refused to vacate Gill Tract despite the orders and
26 admonitions by University police.

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FIRST CAUSE OF ACTION
(Trespass – Against all Defendants)

43. The Regents incorporates by reference each and all of the allegations contained in paragraphs 1 through 42 of this complaint, as fully set forth herein.

44. Gill Tract is owned by The Regents and is in its exclusive possession.

45. Defendants illegally entered Gill Tract on or about April 22, 2012 and have remained on the property since that time.

46. Defendants exit the property for periods of time to conduct other activities, but have expressed their intention to return, and do return and remain on Gill Tract in defiance of UC Berkeley Police admonitions for them to permanently vacate the property.

47. Defendants' continuing presence on Gill Tract has caused and continues to cause damage to The Regents. Faculty of the College of Natural Resources are unable to plant the crops used in their ongoing research due to defendants' presence and occupation of Gill Tract. The inability to plant their crop harms their research programs, the education of their graduate students, and the research and educational missions of the University.

48. The Regents has no adequate remedy at law for the injuries currently being suffered in that it will be impossible for the Regents to determine the precise amount of damages that it will suffer if defendants' conduct is not restrained.

49. As a proximate result of defendants' wrongful conduct, The Regents has suffered damages. The full amount of this damage is not now known to The Regents. The Regents will amend this complaint to state this amount on proof of the damages.

50. Unless defendants are restrained, defendants will continue to reside on Gill Tract without The Regents' consent.

SECOND CAUSE OF ACTION
(Nuisance – Against all Defendants)

51. The Regents incorporates by reference each and all of the allegations contained in paragraphs 1 through 50 of this complaint, as fully set forth herein.

52. Gill Tract is owned by The Regents and is in its exclusive possession.

1 53. At all times mentioned, and since April 22, 2012, defendants, and each of
2 them, have occupied, used, and maintained the property at Gill Tract in such a manner that
3 prevents employees of the University from preparing the field for planting and prevents
4 University scientists from planting on Gill Tract.

5 54. The aforementioned occupation, use and maintenance by defendants of The
6 Regents' property constitutes a nuisance within the meaning of Section 3479 of the Civil Code, in
7 that it is injurious to the health and safety of members of the campus community and interferes
8 with the comfortable use and enjoyment of University property.

9 55. The nuisance affects, at the same time, a considerable number of persons in
10 that members of the campus community, notably Scientists affiliated with the College of Natural
11 Resources who use Gill Tract to conduct research on plant genetics. The nuisance also causes
12 special injury to The Regents as the owner of the property.

13 56. Defendants, and each of them, have threatened to and will, unless
14 restrained by this Court, continue to maintain the nuisance and continue the acts complained of,
15 and each and every act has been, and will be, without the consent, against the will, and in
16 violation of the rights of The Regents.

17 57. Unless defendants, and each of them, are enjoined from continuing their
18 course of conduct, The Regents will suffer irreparable injury in that the University's research and
19 educational mission will be harmed due to the inability of University scientists to conduct their
20 research on Gill Tract.

21 58. The Regents has no adequate remedy at law for the injuries currently being
22 suffered in that it will be impossible for The Regents to determine the precise amount of damages
23 that it will suffer if defendants' conduct is not restrained and, in addition, injunctive relief is
24 expressly authorized by Sections 526 and 731 of the Code of Civil Procedure.

25 59. In maintaining the nuisance, defendants, and each of them, are acting with
26 full knowledge of the consequences and damage being caused to The Regents, and their conduct
27 is willful, oppressive and malicious; accordingly, The Regents is entitled to punitive damage
28 against defendants, and each of them.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays against defendants and each of them as follows:

3 1. For a temporary restraining order, a preliminary injunction and a
4 permanent injunction, all enjoining (permanently and restraining during the pendency of this
5 action) defendants, and each of them, and their officers, agents, servants, members, employees,
6 and representatives, and all other persons acting in concert or participating with them, or any of
7 them, from entering onto, trespassing on or otherwise occupying or living on the University of
8 California, Berkeley property located in Albany, California known as Gill Tract, or attempting to
9 cultivate the land or grow plants on Gill Tract, or placing or maintaining any objects at Gill Tract,
10 including but not limited to tents, receptacles containing human waste, or devices for preparing
11 food.

12 2. For damages according to proof;

13 3. For damages as permitted under California Civil Code section 3334;

14 4. For punitive damages;

15 5. For costs of suit incurred in this action;

16 6. For attorneys' fees as permitted under California Code of Civil Procedure
17 section 1021.9.

18 7. For any other further relief as the Court may deem just and proper.

19 Dated: May 9, 2012

CROWELL & MORING LLP

20 

21 M. Kay Martin
22 Attorneys for Plaintiff
23 The Regents of the University of California
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